

**So Ordered.**



Patina C Williams

**Patricia C. Williams  
Bankruptcy Judge**

**Dated: November 16th, 2012**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In re:

## LLS AMERICA, LLC.

## Debtor.

No. 09-06194-PCW11

BRUCE P. KRIEGMAN, solely in  
his capacity as court-appointed  
Chapter 11 Trustee for LLS America,  
LLC,

Plaintiff,

Adv. No. 11-80297-PCW

VS.

0817726 BC, LTD., et al.,

**MEMORANDUM DECISION RE:  
CERTAIN DEFENDANTS' MOTIONS  
TO DISMISS**

24 This adversary is one of hundreds commenced by the trustee of the LLS America,  
25 LLC (“LLS America”) bankruptcy estate, which adversaries seek to recover money paid  
26 by the debtor to certain lenders or investors as part of an alleged Ponzi scheme  
27 conducted by the debtor. The following defendants filed motions to dismiss on April 25,  
28 2012 in this adversary proceeding:

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1	<b><u>Defendant</u></b>	<b><u>ECF No.</u></b>
2	692323 Capital, Inc.	174
3	BBI Group Investments	176
4	Dave and Bev Coello	178
5	Harrison Bay Dairy Farm, Ltd.	180
6	Doug and Barbara James	182
7	Iris MacDonald	186
8	Elaine Nichols	188
9	Gary and Erin Padgham	190
10	Gary and Iris Padgham	192
11	Thomas and Glenda Popowich	194
12	Mike and Marcelle Power	196
13	Kathy Roberts	198
14	Jackson Saunders	200
15	Martha Schultz	202
16	Ron and Lois Taylor	204
17	Stan and Diane Tymkow	248

11        In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written  
 12 decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss  
 13 and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of  
 14 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal  
 15 raised in the subject motions are the same as those raised in the Previous Decision. Many  
 16 of the facts in the Previous Decision are relevant to the subject motions.

17        The trustee in a supplemental affidavit of Curtis Frye, ECF No. 238, and the  
 18 defendants, by declarations, provided the following evidence:

19        1. 692323 Capital, Inc. - The trustee presented evidence in this case that the  
 20 defendant loaned or invested \$30,113.42 (USD) and one (1) promissory note was issued.  
 21 In eight (8) distributions occurring from June 2008 to August 2008, the defendant  
 22 received \$64,000.02 (USD). According to the trustee, the defendant filed a proof of  
 23 claim in the amount of \$155,000 in the underlying LLS America case. By declaration  
 24 (ECF No. 175), Marvin Toews, on behalf of the defendant, presented evidence that it  
 25 resides in Alberta, Canada, and did not solicit any business in the United States. The  
 26 declaration does not state if the defendant was formed under the laws of Canada or the  
 27 United States. The declaration further states that the loans or investments were solicited  
 28 in Canada, but no details were provided regarding the manner of the solicitation.

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1       2.    BBI Group Investments - The trustee presented evidence in this case that  
2 the defendant loaned or invested \$32,500 (CAN) and two (2) promissory notes were  
3 issued. In 42 disbursements occurring from May 2004 to December 2008, the defendant  
4 received \$94,926.69 (CAN). According to the trustee, the defendant filed a proof of  
5 claim in the amount of \$63,000 in the underlying LLS America case. By declaration  
6 (ECF No. 177), Amar Bains, on behalf of the defendant, presented evidence that it was  
7 formed under the laws of Canada, does not operate a business in the United States, and  
8 each promissory note listed a Canadian entity as borrower with distributions only made  
9 in Canadian currency. The declaration further states that the loans or investments were  
10 solicited in Canada, but no details were provided regarding the manner of solicitation.

11      3.    Dave and Bev Coello - The trustee presented evidence in this case that the  
12 defendants loaned or invested \$60,000 (CAN) and four (4) promissory notes were  
13 issued. In 61 distributions occurring from September 2004 to February 2009, the  
14 defendants received \$66,846.14 (CAN). According to the trustee, the defendants filed  
15 a proof of claim in the amount of \$84,000 in the underlying LLS America case. By  
16 declaration (ECF No. 179), the defendants presented evidence that they reside in  
17 Canada, rarely travel to the United States, and “virtually all” promissory notes listed a  
18 Canadian entity as borrower with distributions primarily made from Canadian entities.  
19 The declaration further states that the loans or investments were solicited in Canada, but  
20 no details were provided regarding the manner of solicitation.

21      4.    Harrison Bay Dairy Farm, Ltd. - The trustee presented evidence in this case  
22 that the defendant loaned or invested \$50,000 (CAN) and one (1) promissory note was  
23 issued. In 29 distributions occurring from November 2004 to January 2008, the  
24 defendant received \$81,249.91 (CAN). According to the trustee, the defendant filed a  
25 proof of claim in the amount of \$93,750.08 in the underlying LLS America case. By  
26 declaration (ECF No. 181), Eric Van Dyk, on behalf of the defendant, presented  
27 evidence that it was formed under the laws of Canada, does not operate a business in the  
28 United States, and each promissory note listed a Canadian entity as a borrower with

1 distributions only made from Canadian entities. The declaration further states that the  
2 loans or investments were solicited in Canada, but no details were provided regarding  
3 the manner of solicitation.

4       5. Doug and Barbara James - The trustee presented evidence in this case that  
5 the defendants loaned or invested \$15,000 (USD) and two (2) promissory notes were  
6 issued. In 322 distributions occurring from October 1999 to October 2008, the  
7 defendants received \$78,976.15 (USD) and \$90,067.28 (CAN). According to the trustee,  
8 the defendants filed proofs of claims in the amount of \$30,000 (USD) and \$23,000  
9 (CAN) in the underlying LLS America case. By declaration (ECF No. 183), the  
10 defendants presented evidence that they reside in Canada and rarely travel to the United  
11 States. The declaration further states that the loans or investments were solicited in  
12 Canada, but no details were provided regarding the manner of solicitation.

13       6. Iris MacDonald - The trustee presented evidence in this case that the  
14 defendant loaned or invested \$60,000 (CAN) and four (4) promissory notes were issued.  
15 In 45 distributions occurring between November 2005 and February 2009, the defendant  
16 received \$64,284 (CAN). According to the trustee, the defendant filed a proof of claim  
17 in the amount of \$85,050 in the underlying LLS America case. By declaration (ECF No.  
18 187), the defendant presented evidence that she resides in Canada, rarely travels to the  
19 United States, and each promissory note listed a Canadian entity as borrower with  
20 distributions primarily made from Canadian entities. The declaration further states that  
21 the loans or investments were solicited in Canada, but no details were provided  
22 regarding the manner of solicitation.

23       7. Elaine Nichols - The trustee presented evidence in this case that the  
24 defendant loaned or invested \$20,000 (USD) and two (2) promissory notes were issued.  
25 In 197 distributions occurring from February 2002 to January 2009, the defendant  
26 received \$58,671.10 (USD). According to the trustee, the defendant filed a proof of  
27 claim in the amount of \$54,600 in the underlying LLS America case. By declaration  
28 (ECF No. 189), the defendant presented evidence that she resides in Canada, has not

1 traveled to the United States for business matters, and “virtually all” promissory notes  
2 listed a Canadian entity as borrower. The declaration further states that the loans or  
3 investments were solicited in Canada, but no details were provided regarding the manner  
4 of solicitation.

5       8.     Gary and Erin Padgham - The trustee presented evidence in this case that  
6 the defendants loaned or invested \$24,000 (CAN) and four (4) promissory notes were  
7 issued. In 22 distributions occurring from September 2005 to March 2009, the  
8 defendants received \$55,366.67. According to the trustee, the defendants filed a proof  
9 of claim in the amount of \$67,526.84 in the underlying LLS America case. By  
10 declaration (ECF No. 191), the defendants presented evidence that they reside in  
11 Canada, have not traveled to the United States for any business matters, and each  
12 promissory note listed a Canadian entity as borrower with distributions primarily made  
13 from Canadian entities. The declaration further states that the loans or investments were  
14 solicited outside the United States, but no details were provided regarding the manner  
15 of solicitation.

16       9.     Gary and Iris Padgham - The trustee presented evidence in this case that the  
17 defendants loaned or invested \$30,000 (CAN) and four (4) promissory notes were  
18 issued. In 22 distributions occurring from December 2005 to July 2008, the defendants  
19 received \$76,000 (CAN). According to the trustee, the defendants filed a proof of claim  
20 in the amount of \$87,728.60 in the underlying LLS America case. By declaration (ECF  
21 No. 193), the defendants presented evidence that they reside in Canada, have not  
22 traveled to the United States for any business matters, and each promissory note listed  
23 a Canadian entity as borrower with distributions primarily made from Canadian entities.  
24 The declaration further states that the loans or investments were solicited outside the  
25 United States, but no details were provided regarding the manner of solicitation.

26       10.    Thomas and Glenda Popowich - Trustee presented evidence in this case that  
27 the defendants loaned or invested \$75,000 (CAN) and four (4) promissory notes were  
28 issued. In 43 distributions occurring from November 2005 to February 2009, the

1 defendants received \$80,372.70 (CAN). According to the trustee, the defendants filed  
2 a proof of claim in the amount of \$99,665.14 in the underlying LLS America case. By  
3 declaration (ECF No. 195), the defendants presented evidence that they reside in  
4 Canada, rarely travel to the United States, and each promissory note listed a Canadian  
5 entity as borrower with distributions primarily made from Canadian entities. The  
6 declaration further states that the loans or investments were solicited in Canada, but no  
7 details were provided regarding the manner of solicitation.

8       11. Mike and Marcelle Power - The trustee presented evidence in this case that  
9 the defendants loaned or invested \$80,000 (CAN) with 11 promissory notes issued. In  
10 83 distributions occurring from December 2004 to October 2008, the defendants  
11 received \$97,594.82 (CAN). According to the trustee, the defendants filed a proof of  
12 claim in the amount of \$141,111.36 in the underlying LLS America case. By declaration  
13 (ECF No. 197), the defendants presented evidence that they reside in Canada, have not  
14 traveled to the United States for any business matters, and each promissory note listed  
15 a Canadian entity as borrower with distributions primarily made from Canadian entities.  
16 The declaration further states that the loans or investments were solicited in Canada, but  
17 no details were provided regarding the manner of solicitation.

18       12. Kathy Roberts - The trustee presented evidence in this case that the  
19 defendant loaned or invested \$40,000 (CAN) and three (3) promissory notes were issued.  
20 In 131 distributions occurring from September 2003 to June 2008, the defendant  
21 received \$90,166.66 (CAN). According to the trustee, the defendant filed a proof of  
22 claim in the amount of \$40,000 in the underlying LLS America case. By declaration  
23 (ECF No. 199), the defendant presented evidence that she resides in Canada, rarely  
24 travels to the United States, and each promissory note listed a Canadian entity as  
25 borrower with distributions primarily made from Canadian entities. The declaration  
26 further states that the loans or investments were solicited in Canada, but no details were  
27 provided regarding the manner of solicitation.

1           13. Jackson Saunders - The trustee presented evidence in this case that the  
2 defendant loaned or invested an unknown amount and one (1) promissory note was  
3 issued. In 46 distributions occurring from June 2003 to July 2008, the defendant  
4 received \$61,000 (CAN). According to the trustee, the defendant filed a proof of claim  
5 in the amount of \$34,983 in the underlying LLS America case. By declaration (ECF No.  
6 201), the defendant presented evidence that he resides in Canada, rarely travels to the  
7 United States, and each promissory note listed a Canadian entity as borrower with  
8 distributions primarily made from Canadian entities. The declaration further states that  
9 the loans or investments were solicited in Canada, but no details were provided  
10 regarding the manner of solicitation.

11          14. Martha Schultz - The trustee presented evidence in this case that the  
12 defendant loaned or invested \$25,000 (CAN) and seven (7) promissory notes were  
13 issued. In 115 distributions occurring from January 2001 to July 2008, the defendant  
14 received \$49,700.76 (CAN). According to the trustee, the defendant filed a proof of  
15 claim in the amount of \$36,000 in the underlying LLS America case. By declaration  
16 (ECF No. 203), the defendant presented evidence that she resides in Canada, rarely  
17 travels to the United States, and each promissory note listed a Canadian entity as  
18 borrower with distributions primarily made from Canadian entities. The declaration  
19 further states that the loans or investments were solicited in Canada, but no details were  
20 provided regarding the manner of the solicitation.

21          15. Ron and Lois Taylor - The trustee presented evidence in this case that the  
22 defendants loaned or invested an unknown amount and four (4) promissory notes were  
23 issued. In 162 disbursements occurring from May 1998 to March 2009, the defendants  
24 received \$68,041.62 (CAN). According to the trustee, the defendants filed a proof of  
25 claim in the amount of \$30,000 in the underlying LLS America case. By declaration of  
26 only Lois Taylor (ECF No. 205) as co-defendant Ron Taylor is now deceased, she  
27 presented evidence that she resides in Canada, does not have regular interactions with  
28 the United States, and each promissory note listed a Canadian entity as borrower with

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1 distributions primarily made from Canadian entities. The declaration further states that  
2 the loans or investments were solicited in Canada, but no details were provided  
3 regarding the manner of solicitation.

4 The trustee in the affidavit of Curtis Frye filed in adversary proceeding No. 11-  
5 80157-PCW, ECF No. 11, and the defendants Stan and Diane Tymkow, by declaration,  
6 provided the following evidence:

7 Stan and Diane Tymkow - The trustee presented evidence that the defendant  
8 loaned or invested \$50,000 (CAN) and three (3) promissory notes were issued. In 23  
9 distributions occurring from January 2006 to February 2009, the defendant received  
10 \$53,230.05 (CAN). According to the trustee, the defendant filed a proof of claim in the  
11 amount of \$70,000 in the underlying LLS America case. By declaration (ECF No. 249),  
12 defendant Diana Tymkow presented evidence that co-defendant Stan Tymkow is  
13 deceased, that she resides in Canada, rarely travels to the United States, and each  
14 promissory note listed a Canadian entity as borrower with distributions primarily made  
15 from Canadian entities. The declaration further states that the loans or investments were  
16 solicited in Canada, but no details were provided regarding the manner of the  
17 solicitation.

18 The grounds for dismissal in the subject motions are: (1) ineffective service of  
19 process; (2) improper extraterritorial application of United States bankruptcy law; and  
20 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.  
21 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set  
22 forth in the Previous Decision and is applicable to the subject motions.

23 As in the Previous Decision, one basis for the request to dismiss is the lack of  
24 personal jurisdiction. As articulated in the Previous Decision, the filing of a proof of  
25 claim is a consent to jurisdiction to adjudicate that claim and the related action brought  
26 by the trustee of the LLS America estate under 11 U.S.C. § 548. The reasoning regarding  
27 the denial of dismissal based upon a consent to personal jurisdiction is set forth in the  
28

1 Previous Decision and is applicable to the subject motions, which are **DENIED**. Counsel  
2 for the defendants shall submit orders consistent with this decision.

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4 //END OF MEMORANDUM DECISION//

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